

FIRST REGULAR SESSION

SENATE BILL NO. 151

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0627S.011

AN ACT

To repeal sections 143.071, 143.451, and 143.461, RSMo, and to enact in lieu thereof three new sections relating to corporate income taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 143.071, 143.451, and 143.461, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 143.071,
3 143.451, and 143.461, to read as follows:

143.071. 1. For all tax years beginning before September 1, 1993, a tax
2 is hereby imposed upon the Missouri taxable income of corporations in an amount
3 equal to five percent of Missouri taxable income.

4 2. For all tax years beginning on or after September 1, 1993, and [ending]
5 **beginning** on or before December 31, 2019, a tax is hereby imposed upon the
6 Missouri taxable income of corporations in an amount equal to six and one-fourth
7 percent of Missouri taxable income.

8 3. For all tax years beginning on or after January 1, 2020, a tax is hereby
9 imposed upon the Missouri taxable income of corporations in an amount equal to
10 four percent of Missouri taxable income.

11 4. The provisions of this section shall not apply to out-of-state businesses
12 operating under sections 190.270 to 190.285.

143.451. 1. Missouri taxable income of a corporation shall include all
2 income derived from sources within this state.

3 2. For all tax years [ending] **beginning** on or before December 31, 2019,
4 a corporation described in subdivision (1) of subsection 1 of section 143.441 shall
5 include in its Missouri taxable income all income from sources within this state,
6 including that from the transaction of business in this state and that from the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

7 transaction of business partly done in this state and partly done in another state
8 or states. However:

9 (1) Where income results from a transaction partially in this state and
10 partially in another state or states, and income and deductions of the portion in
11 the state cannot be segregated, then such portions of income and deductions shall
12 be allocated in this state and the other state or states as will distribute to this
13 state a portion based upon the portion of the transaction in this state and the
14 portion in such other state or states.

15 (2) The taxpayer may elect to compute the portion of income from all
16 sources in this state in the following manner, or the manner set forth in
17 subdivision (3) of this subsection:

18 (a) The income from all sources shall be determined as provided,
19 excluding therefrom the figures for the operation of any bridge connecting this
20 state with another state.

21 (b) The amount of sales which are transactions wholly in this state shall
22 be added to one-half of the amount of sales which are transactions partly within
23 this state and partly without this state, and the amount thus obtained shall be
24 divided by the total sales or in cases where sales do not express the volume of
25 business, the amount of business transacted wholly in this state shall be added
26 to one-half of the amount of business transacted partly in this state and partly
27 outside this state and the amount thus obtained shall be divided by the total
28 amount of business transacted, and the net income shall be multiplied by the
29 fraction thus obtained, to determine the proportion of income to be used to arrive
30 at the amount of Missouri taxable income. The investment or reinvestment of its
31 own funds, or sale of any such investment or reinvestment, shall not be
32 considered as sales or other business transacted for the determination of said
33 fraction.

34 (c) For the purposes of this subdivision, a transaction involving the sale
35 of tangible property is:

36 a. "Wholly in this state" if both the seller's shipping point and the
37 purchaser's destination point are in this state;

38 b. "Partly within this state and partly without this state" if the seller's
39 shipping point is in this state and the purchaser's destination point is outside
40 this state, or the seller's shipping point is outside this state and the purchaser's
41 destination point is in this state;

42 c. Not "wholly in this state" or not "partly within this state and partly

43 without this state" only if both the seller's shipping point and the purchaser's
44 destination point are outside this state.

45 (d) For purposes of this subdivision:

46 a. The purchaser's destination point shall be determined without regard
47 to the FOB point or other conditions of the sale; and

48 b. The seller's shipping point is determined without regard to the location
49 of the seller's principle office or place of business.

50 (3) The taxpayer may elect to compute the portion of income from all
51 sources in this state in the following manner:

52 (a) The income from all sources shall be determined as provided,
53 excluding therefrom the figures for the operation of any bridge connecting this
54 state with another state;

55 (b) The amount of sales which are transactions in this state shall be
56 divided by the total sales, and the net income shall be multiplied by the fraction
57 thus obtained, to determine the proportion of income to be used to arrive at the
58 amount of Missouri taxable income. The investment or reinvestment of its own
59 funds, or sale of any such investment or reinvestment, shall not be considered as
60 sales or other business transacted for the determination of said fraction;

61 (c) For the purposes of this subdivision, a transaction involving the sale
62 of tangible property is:

63 a. "In this state" if the purchaser's destination point is in this state;

64 b. Not "in this state" if the purchaser's destination point is outside this
65 state;

66 (d) For purposes of this subdivision, the purchaser's destination point
67 shall be determined without regard to the FOB point or other conditions of the
68 sale and shall not be in this state if the purchaser received the tangible personal
69 property from the seller in this state for delivery to the purchaser's location
70 outside this state;

71 (e) For the purposes of this subdivision, a transaction involving the sale
72 other than the sale of tangible property is "in this state" if the taxpayer's market
73 for the sales is in this state. The taxpayer's market for sales is in this state:

74 a. In the case of sale, rental, lease, or license of real property, if and to
75 the extent the property is located in this state;

76 b. In the case of rental, lease, or license of tangible personal property, if
77 and to the extent the property is located in this state;

78 c. In the case of sale of a service, if and to the extent the ultimate

79 beneficiary of the service is located in this state and shall not be in this state if
80 the ultimate beneficiary of the service rendered by the taxpayer or the taxpayer's
81 designee is located outside this state; and

82 d. In the case of intangible property:

83 (i) That is rented, leased, or licensed, if and to the extent the property is
84 used in this state by the rentee, lessee, or licensee, provided that intangible
85 property utilized in marketing a good or service to a consumer is "used in this
86 state" if that good or service is purchased by a consumer who is in this
87 state. Franchise fees or royalties received for the rent, lease, license, or use of a
88 trade name, trademark, service mark, or franchise system or provides a right to
89 conduct business activity in a specific geographic area are "used in this state" to
90 the extent the franchise location is in this state; and

91 (ii) That is sold, if and to the extent the property is used in this state,
92 provided that:

93 i. A contract right, government license, or similar intangible property that
94 authorizes the holder to conduct a business activity in a specific geographic area
95 is "used in this state" if the geographic area includes all or part of this state;

96 ii. Receipts from intangible property sales that are contingent on the
97 productivity, use, or disposition of the intangible property shall be treated as
98 receipts from the rental, lease, or licensing of such intangible property under item
99 (i) of this subparagraph; and

100 iii. All other receipts from a sales of intangible property shall be excluded
101 from the numerator and denominator of the sales factor;

102 (f) If the state or states of assignment under paragraph (e) of this
103 subdivision cannot be determined, the state or states of assignment shall be
104 reasonably approximated;

105 (g) If the state of assignment cannot be determined under paragraph (e)
106 of this subdivision or reasonably approximated under paragraph (f) of this
107 subdivision, such sales shall be excluded from the denominator of the sales factor;

108 (h) The director may prescribe such rules and regulations as necessary or
109 appropriate to carry out the purposes of this section.

110 (4) For purposes of this subsection, the following words shall, unless the
111 context otherwise requires, have the following meaning:

112 (a) "Administration services" include, but are not limited to, clerical, fund
113 or shareholder accounting, participant record keeping, transfer agency,
114 bookkeeping, data processing, custodial, internal auditing, legal and tax services

115 performed for an investment company;

116 (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C),
117 as may be amended from time to time;

118 (c) "Distribution services" include, but are not limited to, the services of
119 advertising, servicing, marketing, underwriting or selling shares of an investment
120 company, but, in the case of advertising, servicing or marketing shares, only
121 where such service is performed by a person who is, or in the case of a closed end
122 company, was, either engaged in the services of underwriting or selling
123 investment company shares or affiliated with a person that is engaged in the
124 service of underwriting or selling investment company shares. In the case of an
125 open end company, such service of underwriting or selling shares must be
126 performed pursuant to a contract entered into pursuant to 15 U.S.C. Section
127 80a-15(b), as from time to time amended;

128 (d) "Investment company", any person registered under the federal
129 Investment Company Act of 1940, as amended from time to time, (the act) or a
130 company which would be required to register as an investment company under
131 the act except that such person is exempt to such registration pursuant to Section
132 80a-3(c)(1) of the act;

133 (e) "Investment funds service corporation" includes any corporation or S
134 corporation doing business in the state which derives more than fifty percent of
135 its gross income in the ordinary course of business from the provision directly or
136 indirectly of management, distribution or administration services to or on behalf
137 of an investment company or from trustees, sponsors and participants of employee
138 benefit plans which have accounts in an investment company. An investment
139 funds service corporation shall include any corporation or S corporation providing
140 management services as an investment advisory firm registered under Section
141 203 of the Investment Advisors Act of 1940, as amended from time to time,
142 regardless of the percentage of gross revenues consisting of fees from
143 management services provided to or on behalf of an investment company;

144 (f) "Management services" include but are not limited to, the rendering of
145 investment advice directly or indirectly to an investment company making
146 determinations as to when sales and purchases of securities are to be made on
147 behalf of the investment company, or the selling or purchasing of securities
148 constituting assets of an investment company, and related activities, but only
149 where such activity or activities are performed:

150 a. Pursuant to a contract with the investment company entered into

151 pursuant to 15 U.S.C. Section 80a-15(a), as from time to time amended;

152 b. For a person that has entered into such contract with the investment
153 company; or

154 c. For a person that is affiliated with a person that has entered into such
155 contract with an investment company;

156 (g) "Qualifying sales", gross income derived from the provision directly or
157 indirectly of management, distribution or administration services to or on behalf
158 of an investment company or from trustees, sponsors and participants of employee
159 benefit plans which have accounts in an investment company. For purposes of
160 this section, "gross income" is defined as that amount of income earned from
161 qualifying sources without deduction of expenses related to the generation of such
162 income;

163 (h) "Residence", presumptively the fund shareholder's mailing address on
164 the records of the investment company. If, however, the investment company or
165 the investment funds service corporation has actual knowledge that the fund
166 shareholder's primary residence or principal place of business is different than
167 the fund shareholder's mailing address such presumption shall not control. To
168 the extent an investment funds service corporation does not have access to the
169 records of the investment company, the investment funds service corporation may
170 employ reasonable methods to determine the investment company fund
171 shareholder's residence.

172 (5) Notwithstanding other provisions of law to the contrary, qualifying
173 sales of an investment funds service corporation, or S corporation, shall be
174 considered wholly in this state only to the extent that the fund shareholders of
175 the investment companies, to which the investment funds service corporation, or
176 S corporation, provide services, are resided in this state. Wholly in this state
177 qualifying sales of an investment funds service corporation, or S corporation, shall
178 be determined as follows:

179 (a) By multiplying the investment funds service corporation's total dollar
180 amount of qualifying sales from services provided to each investment company by
181 a fraction, the numerator of which shall be the average of the number of shares
182 owned by the investment company's fund shareholders resided in this state
183 at the beginning of and at the end of the investment company's taxable year that
184 ends with or within the investment funds service corporation's taxable year, and
185 the denominator of which shall be the average of the number of shares owned by
186 the investment company's fund shareholders everywhere at the beginning of and

187 at the end of the investment company's taxable year that ends with or within the
188 investment funds service corporation's taxable year;

189 (b) A separate computation shall be made to determine the wholly in this
190 state qualifying sales from each investment company. The qualifying sales for
191 each investment company shall be multiplied by the respective percentage of each
192 fund, as calculated pursuant to paragraph (a) of this subdivision. The product of
193 this equation shall result in the wholly in this state qualifying sales. The
194 qualifying sales for each investment company which are not wholly in this state
195 will be considered wholly without this state;

196 (c) To the extent an investment funds service corporation has sales which
197 are not qualifying sales, those nonqualified sales shall be apportioned to this
198 state based on the methodology utilized by the investment funds service
199 corporation without regard to this subdivision.

200 (6) Notwithstanding the Multistate Tax Compact, sections 32.200 to
201 32.240, this section, and section 143.461 to the contrary, sales and business
202 transactions shall not include any intercompany transactions, as that term is
203 defined under 26 C.F.R. 1.1502 -13, between corporations that file a consolidated
204 income tax return in this state.

205 3. Any corporation described in subdivision (1) of subsection 1 of section
206 143.441 organized in this state or granted a permit to operate in this state for the
207 transportation or care of passengers shall report its gross earnings within the
208 state on intrastate business and shall also report its gross earnings on all
209 interstate business done in this state which report shall be subject to inquiry for
210 the purpose of determining the amount of income to be included in Missouri
211 taxable income. The previous sentence shall not apply to a railroad.

212 4. A corporation described in subdivision (2) of subsection 1 of section
213 143.441 shall include in its Missouri taxable income all income arising from all
214 sources in this state and all income from each transportation service wholly
215 within this state, from each service where the only lines of such corporation used
216 are those in this state, and such proportion of revenue from each service where
217 the facilities of such corporation in this state and in another state or states are
218 used, as the mileage used over the lines of such corporation in the state shall
219 bear to the total mileage used over the lines of such corporation. The taxpayer
220 may elect to compute the portion of income from all sources within this state in
221 the following manner:

222 (1) The income from all sources shall be determined as provided;

223 (2) The amount of investment of such corporation on December thirty-first
224 of each year in this state in fixed transportation facilities, real estate and
225 improvements, plus the value on December thirty-first of each year of any fixed
226 transportation facilities, real estate and improvements in this state leased from
227 any other railroad shall be divided by the sum of the total amount of investment
228 of such corporation on December thirty-first of each year in fixed transportation
229 facilities, real estate and improvements, plus the value on December thirty-first
230 of each year, of any fixed transportation facilities, real estate and improvements
231 leased from any other railroad. Where any fixed transportation facilities, real
232 estate or improvements are leased by more than one railroad, such portion of the
233 value shall be used by each railroad as the rental paid by each shall bear to the
234 rental paid by all lessees. The income shall be multiplied by the fraction thus
235 obtained to determine the proportion to be used to arrive at the amount of
236 Missouri taxable income.

237 5. A corporation described in subdivision (3) of subsection 1 of section
238 143.441 shall include in its Missouri taxable income one-half of the net income
239 from the operation of a bridge between this and another state. If any such bridge
240 is owned or operated by a railroad corporation or corporations, or by a corporation
241 owning a railroad corporation using such bridge, then the figures for operation
242 of such bridge may be included in the return of such railroad or railroads; or if
243 such bridge is owned or operated by any other corporation which may now or
244 hereafter be required to file an income tax return, one-half of the income or loss
245 to such corporation from such bridge may be included in such return by adding
246 or subtracting same to or from another net income or loss shown by the return.

247 6. A corporation described in subdivision (4) of subsection 1 of section
248 143.441 shall include in its Missouri taxable income all income arising from all
249 sources within this state. Income shall include revenue from each telephonic or
250 telegraphic service rendered wholly within this state; from each service rendered
251 for which the only facilities of such corporation used are those in this state; and
252 from each service rendered over the facilities of such corporation in this state and
253 in other state or states, such proportion of such revenue as the mileage involved
254 in this state shall bear to the total mileage involved over the lines of said
255 company in all states. The taxpayer may elect to compute the portion of income
256 from all sources within this state in the following manner:

257 (1) The income from all sources shall be determined as provided;

258 (2) The amount of investment of such corporation on December thirty-first

259 of each year in this state in telephonic or telegraphic facilities, real estate and
260 improvements thereon, shall be divided by the amount of the total investment of
261 such corporation on December thirty-first of each year in telephonic or telegraphic
262 facilities, real estate and improvements. The income of the taxpayer shall be
263 multiplied by the fraction thus obtained to determine the proportion to be used
264 to arrive at the amount of Missouri taxable income.

265 7. From the income determined in subsections 2, 3, 4, 5 and 6 of this
266 section to be from all sources within this state shall be deducted such of the
267 deductions for expenses in determining Missouri taxable income as were incurred
268 in this state to produce such income and all losses actually sustained in this state
269 in the business of the corporation.

270 8. If a corporation derives only part of its income from sources within
271 Missouri, its Missouri taxable income shall only reflect the effect of the following
272 listed deductions to the extent applicable to Missouri. The deductions are: (a)
273 its deduction for federal income taxes pursuant to section 143.171, and (b) the
274 effect on Missouri taxable income of the deduction for net operating loss allowed
275 by Section 172 of the Internal Revenue Code. The extent applicable to Missouri
276 shall be determined by multiplying the amount that would otherwise affect
277 Missouri taxable income by the ratio for the year of the Missouri taxable income
278 of the corporation for the year divided by the Missouri taxable income for the year
279 as though the corporation had derived all of its income from sources within
280 Missouri. For the purpose of the preceding sentence, Missouri taxable income
281 shall not reflect the listed deductions.

282 9. Any investment funds service corporation organized as a corporation
283 or S corporation which has any shareholders resided in this state shall be
284 subject to Missouri income tax as provided in this chapter.

285 10. The provisions of this section do not impact any other apportionment
286 election available to a taxpayer under Missouri statutes unless explicitly stated
287 in this section.

143.461. 1. A corporation shall elect to determine income applicable to
2 this state by multiplying the total income from all sources by the fraction
3 determined in the manner in section 143.451 for all tax years [ending]
4 **beginning** on or before December 31, 2019, and for all tax years beginning on or
5 [before] **after** January 1, 2020, in the manner set forth in section 143.455; first,
6 by filing written notice with the director of revenue on or before the due date of
7 the return (including extensions of time) of the taxpayer's election, or, second, by

8 failing to keep its books and records in such manner as to show the income
9 applicable to this state, including gross income and deductions applicable thereto.

10 2. If the corporation shall keep its books and records so as to show the
11 income applicable to this state by any other method of allocation between this
12 state and other states, including gross income and deductions applicable thereto,
13 and such method shows the income applicable to this state, including gross
14 income and deductions applicable thereto, then it may, on or before sixty days
15 before the end of any taxable year, petition the director of revenue, in writing, to
16 be permitted in its return required to be filed to apportion to this state according
17 to the method shown by such books or records. If the director of revenue finds
18 that such method does show the income applicable to this state including gross
19 income and the deductions applicable thereto, he or she shall notify the
20 corporation, at least thirty days prior to the last day on which such corporation's
21 return for that taxable year is to be filed, that it may use that method for the
22 shorter of five years or as long as such method shows the income applicable to
23 this state, including gross income and deductions applicable thereto.

24 3. The corporation shall cease using such method after the shorter of five
25 years or whenever the director of revenue finds and notifies such corporation on
26 or before ninety days before the end of the taxable year, that such method does
27 not so show. Upon and after such expiration or revocation the corporation shall
28 be permitted to petition to use the same or another method of allocation that will
29 show such income including gross income and deductions applicable thereto as
30 though no petition had ever been filed.

31 4. Failure, after a method has expired or been revoked by the director of
32 revenue, to submit a method which the director of revenue finds will show such
33 income applicable to this state including gross income and deductions applicable
34 thereto, on or before sixty days before the end of any taxable year, or failure to
35 make a return on the basis, which has been approved by the director of revenue
36 on petition of the corporation and which stands unrevoked or unexpired, shall
37 constitute an election to accept the determination of income applicable to this
38 state by multiplying the total income from all sources by the fraction determined
39 in the manner set forth in section 143.451 for all tax years [~~ending~~] **beginning**
40 on or before December 31, 2019, and for all tax years [~~beginning~~] **after** on or
41 before January 1, 2020, in the manner set forth in section 143.455.